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Paper No. 15

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AUG 29 2003

In re Application of:
HOLMBERG *et al.*
Serial No.: 09/751,158
Filed: December 27, 2000
For: TAMP PAD

DECISION ON PETITION

This is a decision on the petition filed April 18, 2003, and supplemented on August 11, 2003, to withdraw the holding of abandonment in the above-identified application, or in the alternative, petition to revive unintentionally or unavoidably abandoned application, or, in the alternative, petition to waive the rules under 37 CFR § 1.183¹.

The petition is **GRANTED**.

An Office action was mailed on August 14, 2002. In the absence of a timely filed response, the application was abandoned by operation of law at midnight on February 14, 2003.

Petitioner asserts that the Office action mailed on August 14, 2002, was not received. To support this assertion, petitioner provided a statement attesting that a search of the file jacket and docket records showed that the Office action was not received. Declarations from Ross T. Robinson and Susan J. Williams attesting to the non-receipt of the Office action, and a copy of the file docket where the Office action would have been entered were also included with the petition.

A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket

¹ The petition to withdraw the holding of abandonment under 37 CFR § 1.181, is treated herein. No petition fee is required.

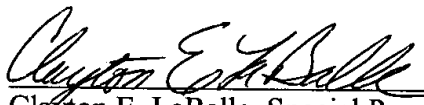
and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition, and the attachments, is sufficient to establish a showing of non-receipt of the Office action mailed August 14, 2002.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for remailing the Office action. The shortened statutory period for response set therein will be reset to run from the date the Office action is remailed. Extensions of time are available under 37 C.F.R. § 1.136.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.


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